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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/581,653

06/01/2006

Arkadi Relin

3963

I. Zborovsky
6 Schoolhouse Way
Dix Hills, NY 11746

7590

10/15/2008

EXAMINER

HARP, WILLIAM RAY

ART UNIT

PAPER NUMBER

3651

MAIL DATE

DELIVERY MODE

10/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/581,653	Applicant(s) RELIN, ARKADI	
	Examiner William R. Harp	Art Unit 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-15 and 18 is/are rejected.
- 7) ☒ Claim(s) 12, 16, 17 and 19-22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers filed under 35 U.S.C. 119 (a)-(d) based on an application filed in United States of America on December 27, 2003. Applicant has not complied with the requirements of 37 CFR 1.63(c), since the oath, declaration or application data sheet does not acknowledge the filing of any foreign application. A new oath, declaration or application data sheet is required in the body of which the present application should be identified by application number and filing date.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the foreign application for patent or inventor's certificate on which priority is claimed pursuant to 37 CFR 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month and year of its filing.

3. Claim 13 is objected to because of the following informalities:

- a. Claim 13, Line 1, - "transporting of object" should read -- transporting of an object --.
- b. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 13 is rejected under 35 U.S.C. 102(b) as being anticipated by Relin et al. (USPN 5593252).

6. Regarding Claim 13, Relin et al. teaches a method of dynamic transporting of an object (particles C3, L45) with a flow of a carrying medium (C3, L43), comprising the steps of: applying to a carrying medium an action (suction) which is created in an action means (fan and motor 4) during a process of a conversion of an energy supplied to the action means (providing electrical power to the motor is a process of a conversion of energy) so that a flow of a carrying medium created in this way acts on an object for providing a process of its transporting in a given direction (the particles are transported through the tube 1); and performing a given modulation of a value of said action in said action means (the suction force is modulated C1, L66-C2, L2), includes providing a given dynamic periodic change of a value of at least one parameter (the cross-sectional area of the passage is adjusted periodically C2, L2-6) which is dynamically connected with a process of conversion in the action means of said energy supplied to it into said action (the passage is connected to the tube), with a simultaneous given change of said value of said parameter in each period of its change during said process of transporting of said object, to provide a given dynamic periodic change (C5, L23-25) of said value of said action on said carrying medium, so that said flow of said carrying medium which is created dynamically moves with a given dynamic periodically changing sign-alternating acceleration during a process of transporting of said object. The change in a force is a change in acceleration

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and since the force is increasing and decreasing, this would imply a positive and negative acceleration.

7. Regarding Claim 15, the particles are not structurally connected with the fan and motor.

8. Regarding Claim 18, there is a pressure-drop in the tube, which is the cause of the suction.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Relin et al. (USPN 5593525).

12. Regarding Claim 14, Relin et al. teaches the limitations above, yet fails to teach the object is the fluid medium. However, in the absence of particles, the device of Relin et al. would continue to provide a suction force, therefore, it would have been obvious that the device would operate in its normal and expected fashion to perform the claimed method.

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Double Patenting

13. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

14. Claims 1-11 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-11 of prior U.S. Patent No. 6827528. This is a double patenting rejection.

Allowable Subject Matter

15. Claims 12, 16, 17, and 19-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

16. The following is a statement of reasons for the indication of allowable subject matter: the prior art does not anticipate or fairly suggest the claimed limitations..

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William R. Harp whose telephone number is (571) 270-5386. The examiner can normally be reached on Monday - Thursday, 8:30 AM - 5:00 PM EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gene Crawford/
Supervisory Patent Examiner, Art Unit
3651

/W. R. H./
Examiner, Art Unit 3651